

Sunnyvale, CA; Arthur Andersen L.L.P., San Jose, CA; Arthur D. Little, Inc., San Francisco, CA; Center for Information Technology and Management, Berkeley, CA; CrossRoute, Redwood Shores, CA; Cyberbusiness Association Japan, Tokyo, JAPAN; Cyberpath, Orem, UT; Dacom Corporation, Seoul, KOREA; Daimler Benz Research and Technology, Palo Alto, CA; Defense Information Systems Agency, Reston, VA; Earthweb Inc., New York, NY; Electronic Purchasing Information Corporation, New York, NY; E-Stamp Corporation, Palo Alto, CA; Fablink, Colorado Springs, CO; First Technology Federal Credit Union, Beaverton, OR; France Telecom, San Francisco, CA; Freddie Mac, McLean, VA; GTE, Needham, MA; GC Tech, New York, NY; Internet Business Group (IBG), Bedford, NH; ICAST Communications Inc., Mountain View, CA; iCat Corporation, Seattle, WA; Idea Center Inc., Las Vegas, NV; InReference Inc., Sunnyvale, CA; Institute of the Future, Menlo Park, CA; Internet Profiles (IPRO), Palo Alto, CA; Lizard Communications Inc., Santa Clara, CA; Logistics Advantage, Atlanta, GA; Mediakola, San Jose, CA; Mercentec Inc., Lisle, IL; MFP Australia, Adelaide, AUSTRALIA; Mitsubishi Electric Corporation, Tokyo, JAPAN; MPACT Immedia Systems, Livonia, MI; NACHA/Wespay, San Bruno, CA; nCipher Limited, Cambridge, ENGLAND; NCR, Lincroft, NJ; Netgrocer, New York, NY; NIA, Oakland, CA; National Institute of Standards and Technology (NIST), Gaithersburg, MD; Nortel, Ottawa, Ontario, CANADA; Northern Telecom (Nortel), Research Triangle Park, NC; Novalink Technologies Inc., Fremont, CA; NTT Data Communications, Palo Alto, CA; Partner, Salt Lake City, UT; Paylinx Corporation, St. Louis, MO; Portland Software, Portland, OR; Saqqara Systems, Sunnyvale, CA; Seoul Web Society, Seoul, KOREA; Signal Internet Technologies, Pittsburgh, PA; Skornia Law Firm, San Jose, CA; Software Forum, Palo Alto, CA; Supply Tech, Ann Arbor, MI; Terisa Systems, Los Altos, CA; Underwriters Laboratories Inc., Santa Clara, CA; U.S. Web, Santa Clara, CA; VeriSign, Mountain View, CA; WhoWhere?, Mountain View, CA; WIZnet-Worldwide Internet Solutions Network Inc., Delray Beach, FL; WorldPoint Interactive Inc., Solana Beach, CA; and Xcert Software, Vancouver, British Columbia, CANADA.

The following organizations have joined the Consortium as In-Kind Members: Council of Better Business Bureaus, Arlington, VA; Gray, Cary, Ware & Friedenrich, Palo Alto, CA; and

Internet Business Group (IBG), Bedford, NH.

The following Sponsor Members have canceled their memberships: Allan-Bradley Company Inc., Albuquerque, NM; NYNEX Corporation, Middleton, MA; Delphi Internet Services Corporation, Cambridge, MA; InterNex Information Services, Menlo Park, CA; Avex Electronics Inc., Huntsville, AL; D.E. Shaw & Co., L.P., New York, NY; and First Interstate Bancorp, Los Angeles, CA.

The following Associate Members have canceled their memberships: Concurrent Technologies Corporation, Oakland, CA; Intercom-University of Virginia, Computer Science Department, Charlottesville, VA; Tradewinds Technologies Incorporate, Winston-Salem, NC; IEEE Computer Society, Washington, DC; European Union Bank, Antigua, WEST INDIES; Los Alamos National Laboratory, Los Alamos, NM; Frontier Technologies Corporation, Mequon, WI; Nihongo Yellow Pages Inc., San Jose, CA; Dun & Bradstreet, Westport, CT; Arroyo Seco/Fore Play Golf, South Pasadena, CA; CyberMark Inc., Washington, DC; Process Software Corporation, Framingham, MA; Danish International Inc., Sunnyvale CA; Internet Shopping Network, Menlo Park, CA; and Nanothinc, San Francisco, CA.

The following companies have changed their memberships from Associate to In-Kind: I/Pro, Palo Alto, CA; and Vanderbilt University, Nashville, TN.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, the Consortium, as 'Smart Valley CommerceNet Consortium Inc., filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on August 17, 1995. A notice was published in the Federal Register on December 18, 1995 (60 FR 65068).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 96-33309 Filed 12-31-96; 8:45 am]
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Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on December 6, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SCR") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AG Associates, Analogy, Inc., and IntelliSense Corporation are no longer members of the joint venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Research Corporation intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on October 16, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on December 6, 1996 (61 FR 64371).

Constance K. Robinson,
Director of Operations, Antitrust Division.
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DEPARTMENT OF LABOR

[Secretary's Order 5-96]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

December 27, 1996.

1. *Purpose.* To delegate authorities and assign responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration.

2. *Directives Affected.* This Order repeals and supersedes Secretary's Order 1-93 (Employment Standards). In

addition, this Order cancels Secretary's Orders: 2-93, 3-93, 4-93, 6-94 (previously superseded in part by Secretary's Order 1-96), 2-95, and 1-96. Finally, this Order cancels my Notice published in the Federal Register at 61 FR 31164 (June 19, 1996).

3. *Background.* This Order, which repeals and supersedes Secretary's Order 1-93, constitutes the generic Secretary's Order for the Employment Standards Administration. Specifically, this Order delegates authorities and assigns responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration as delineated in subparagraphs 3.a.-d. below. All other authority and responsibility set forth in this Order were delegated or assigned previously to the Assistant Secretary for Employment Standards in Secretary's Order 1-93, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

a. *Exchange of Authorities Between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health.*

This Order, in conjunction with Secretary's Order 6-96, effects an exchange of particular authorities and responsibilities between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health. The exchange was tested in a pilot project for Region VI established by Secretary's Order 6-94 (extended by Secretary's Order 1-96), that granted these assistant Secretaries limited concurrent authority to enforce certain environmental and public health-related whistleblower protection laws, which had been delegated to the Employment Standards Administration (ESA) under Secretary's Order 1-93, an certain laws establishing labor standards affecting field sanitation and migrant housing, which had been delegated to the Occupational Safety and Health Administration (OSHA) under Secretary's Order 1-90. The pilot project resulted in a determination that the respective agencies would make better use of their program expertise, and, therefore, that the Department of Labor would more effectively and efficiently utilize its resources, by a permanent transfer of specific enforcement activities between the Assistant Secretaries for ESA and OSHA.

Accordingly, this Order grants the Assistant Secretary for ESA authority under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to enforce compliance by agricultural employers with, and to

develop and issue compliance interpretations regarding, the standards on: (1) Field sanitation, 29 C.F.R. 1928.110; and (2) temporary labor camps, 29 C.F.R. 1910.142, as described in subparagraph 4.a.(22)(b) of this Order. (See subparagraph 4.a.(22) of this Order.) Secretary's Order 6-96 grants the Assistant Secretary for OSHA authority to investigate and resolve allegations of discriminatory actions taken by employers against employees in violation of the following statutory whistleblower protection provisions: (1) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); (2) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; (3) Section 110(a)-(d) of the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)-(d); (4) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367; (5) Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622; (6) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971; and (7) Section 322 of the Clean Air Act, 42 U.S.C. 7622.

b. *Delegation to the Assistant Secretary for Employment Standards: Certain Authorities of the Former Assistant Secretary for the American Workplace.* This Order delegates to the Assistant Secretary for ESA certain authorities of the former Assistant Secretary for the American Workplace, relating principally to the Office of Labor-Management Standards, as set forth in Secretary's Order 2-93. This Order thereby cancels a temporary delegation in my Notice published in the Federal Register at 61 FR 31164 (June 19, 1996). Thus, the Assistant Secretary for ESA shall become the legal successor to the residual authorities and responsibilities of the former Assistant Secretary for the American Workplace. (See subparagraphs 4.a.(23)-(28) of this Order.)

c. *Delegation to the Assistant Secretary for Employment Standards, the Wage and Hour Administrator, and the Regional Administrators: Authority To Issue Administrative Subpoenas.* In *Cudahy Packing Co., Ltd. v. Holland*, 315 U.S. 357 (1942), the Supreme Court ruled that the Wage and Hour Administrator of ESA could not delegate his subpoena authority under the Fair Labor Standards Act to other officials. However, pursuant to Reorganization Plan No. 6 of 1950, reprinted in 5 U.S.C. App., which was authorized by the Reorganization Act of 1949, all functions of the Administrator and other officers of the Department of Labor were transferred to the Secretary. The

Reorganization Plan authorized the Secretary, in turn, to authorize any officer, agency, or employee of the Department to perform any function of the Secretary.

In 1984 Congress expressly ratified Reorganization Plan No. 6 of 1950, see Public Law 98-532 (Oct. 19, 1984), reprinted in 5 U.S.C. 906 note, which thus has the full force and effect of law. Pursuant to this authority, this Order delegates to the Assistant Secretary for ESA, the Wage and Hour Administrator, and the regional administrators, specific authority to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order. (See subparagraphs 4.a.(1)-(3), (8), (9), (21), (22); 4.b.(1); and 4.c. of this Order.)

d. *Delegation to the Assistant Secretary for Employment Standards, the Wage and Hour Administrator, and the Deputy Assistant Secretary for Federal Contract Compliance: Authority To Invoke a Claim of Privilege.* This Order delegates to the Assistant Secretary for ESA, the Wage and Hour Administrator, and the Deputy Assistant Secretary for Federal Contract Compliance, specific authority to formally invoke any necessary governmental claim of privilege arising from the functions of the Wage and Hour Division and the Office of Federal Contract Compliance Programs (this authority was delegated previously to the Wage and Hour Administrator and the Deputy Assistant Secretary for Federal Contract Compliance in Secretary's Orders 3-93 and 4-93, respectively). This Order continues in effect the guidelines, set forth in these earlier Orders, for asserting a formal claim of privilege. (See subparagraphs 4.b.(2) and 4.d. of this Order.)

4. *Delegation of Authority and Assignment of Responsibility.*

a. *The Assistant Secretary for Employment Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards,

and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Assistant Secretary for ESA includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Assistant Secretary for ESA includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 276a *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of

1983, 29 U.S.C. 1801 *et seq.*, including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.*, including subpoena authority under 29 U.S.C. 2004(b).

(10) The Federal Employees' Compensation Act, as amended and extended, 5 U.S.C. 8101 *et seq.*, except 5 U.S.C. 8149, as it pertains to the Employees' Compensation Appeals Board.

(11) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 *et seq.*, except: 33 U.S.C. 919(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(12) The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.*

(13) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, except for monitoring of the Federal contractor job listing activities under 38 U.S.C. 4212(a) and the annual Federal contractor reporting obligations under 38 U.S.C. 4212(d), delegated to the Assistant Secretary for Veterans' Employment and Training.

(14) Sections 501(a), 501(f), 502, and 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791(a), 791(f), 792, and 793; and Executive Order 11758 ("Delegating Authority of the President Under the Rehabilitation Act of 1973") of January 15, 1974.

(15) Executive Order 11246 ("Equal Employment Opportunity") of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; and Executive Order 12086 ("Consolidation of Contract Compliance Functions for Equal Employment Opportunity") of October 5, 1978.

(16) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H-2A) program; and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(17) Section 212(m)(2)(E) (ii) through (v) of the INA, 8 U.S.C. 1182(m)(2)(E) (ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for

users of nonimmigrant registered nurses (*i.e.*, H-1A Visas).

(18) The enforcement of the attestations required by employers under the INA pertaining to the employment of nonimmigrant longshore workers, Section 258 of the INA, 8 U.S.C. 1288(c)(4) (B)-(F); and foreign students working off-campus, 8 U.S.C. 1184 note; and enforcement of labor condition applications for employment of nonimmigrant professionals, Section 212(n)(2) of the INA, 8 U.S.C. 1182(n)(2).

(19) Joint responsibility and authority with the Assistant Secretary for Employment and Training for enforcing the Equal Employment Opportunity in Apprenticeship and Training requirements, as identified in Secretary's Order 4-90.

(20) Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and the regulations at 41 CFR Part 60-742.

(21) The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.*, including subpoena authority under 29 U.S.C. 2616.

(22) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for Employment Standards under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such

authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(23) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.*

(24) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 C.F.R. Parts 457-459.

(25) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(26) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(27) Section 405 (a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565 (a), (b), (c), and (e).

(28) Section 43(d) of the Airline Deregulation Act of 1978, repealed and reenacted at 49 U.S.C. 42101-42103.

(29) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)-(28) of this paragraph, as directed by the Secretary.

b. *The Wage and Hour Administrator of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to:

(1) Issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

(2) Invoke all appropriate claims of privilege, arising from the functions of the Wage and Hour Division, following his/her personal consideration of the matter and in accordance with the following guidelines:

(a) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to the Wage and Hour Division in cases arising under the statutory provisions listed in subparagraph 4.a. of this Order that are delegated or assigned to the Wage and Hour Division): A claim of privilege may be asserted where the Wage-Hour Administrator has determined that disclosure of the privileged matter may: Interfere with the Wage and Hour Division's enforcement of a particular statute for which that Division exercises investigative or enforcement authority; adversely affect persons who have provided information to the Wage and Hour Division; or deter other persons from reporting violations of the statute.

(b) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: The analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters; in cases arising under the statutory provisions listed in subparagraph 4.a. of this Order that are delegated or assigned to the Wage and Hour Division): A claim of privilege may be asserted where the Wage-Hour Administrator has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal the Wage and Hour Division's confidential investigative techniques and procedures): the investigative files privilege may be asserted where the Wage and Hour Administrator has determined that disclosure of the privileged matter may have an adverse impact upon the Wage and Hour Division's enforcement of the statutory provisions that have been delegated or assigned to the Division in subparagraph 4.a. of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to the Wage and Hour Division; prematurely revealing the facts of the Wage and Hour Division's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Wage and Hour Administrator shall personally review: All the documents sought to be withheld (or, in cases where the volume is so large all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Wage and Hour Administrator may ask the Solicitor of Labor or the Solicitor's representative to file any necessary legal papers or documents.

c. *The Wage and Hour Regional Administrators of the Employment Standards Administration* are hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

d. *The Deputy Assistant Secretary for Federal Contract Compliance of the Employment Standards Administration* is hereby delegated authority and assigned responsibility to invoke all appropriate claims of privilege, arising from the functions of the Office of Federal Contract Compliance Programs (OFCCP), following his/her personal consideration of the matter and in accordance with the following guidelines:

(1) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to OFCCP in cases arising under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order): A claim of privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privileged matter may: interfere with an investigative or enforcement action taken by OFCCP under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order; adversely affect persons who have provided information to

OFCCP; or deter other persons from reporting violations of the statute or other authority.

(2) *Deliberative Process Privilege* (to withhold information which may disclose predecisional intra-agency or inter-agency deliberations, including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions or advice on legal or policy matters; in cases arising under an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order): A claim of privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privilege matter would have an inhibiting effect on the agency's decision-making processes.

(3) *Privilege for Investigative Files* compiled for law enforcement purposes (to withhold information which may reveal OFCCP's confidential investigative techniques and procedures): The investigative files privilege may be asserted where the Deputy Assistant Secretary for Federal Contract Compliance has determined that disclosure of the privileged matter may have an adverse impact upon OFCCP's enforcement of an authority delegated or assigned to OFCCP in subparagraph 4.a. of this Order, by: Disclosing investigative techniques and methodologies; deterring persons from providing information to OFCCP; prematurely revealing the facts of OFCCP's case; or disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(4) Prior to filing a formal claim of privilege, the Director shall personally review: All the documents sought to be withheld (or, in cases where the volume is so large that all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and a description or summary of the litigation in which the disclosure is sought.

(5) In asserting a claim of governmental privilege, the Deputy Assistant Secretary for Federal Contract Compliance may ask the Solicitor or the Solicitor's representative to file any necessary legal papers or documents.

e. *The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see subparagraph 4.a.(22) of this Order),

and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

f. *The Chief Financial Officer* is assigned responsibility, in accordance with applicable appropriations enactments, for assuring that resources associated with the programs and functions of the Occupational Safety and Health Administration and the Office of Labor-Management Standards are reallocated and transferred to ESA, as appropriate, in an orderly and equitable manner.

g. *The Assistant Secretary for Administration and Management* is assigned responsibility to assure that any transfer of resources effecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

h. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, and delegated exclusively to the Solicitor.

5. *Reservation of Authority and Responsibility.*

a. The submission of reports and recommendations to the President and the Congress concerning the Administrative Orders listed above is reserved to the Secretary.

b. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2-96 (April 17, 1996).

c. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 2-90 (Office of Inspector General).

6. *Redelegation of Authority.* The Assistant Secretary for Employment Standards, the Chief Financial Officer, the Assistant Secretary for

Administration and Management, and the Solicitor of Labor may redelegate authority delegated in this Order.

7. *Effective Dates.*

a. The delegation of authority and assignment of responsibility set forth in subparagraphs 4.a.(23)-(28) of this Order shall be effective upon publication in the Federal Register.

b. All other delegations of authority and assignments of responsibility set forth in paragraph 4, above shall be effective on February 3, 1997.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96-33365 Filed 12-31-96; 8:45 am]

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[Secretary's Order 6-96]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

December 27, 1996.

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Directives Affected.* This Order repeals and supersedes Secretary's Order 1-90 (Occupational Safety and Health). In addition, this Order cancels Secretary's Orders 6-94 (previously superseded in part by Secretary's Order 1-96) and 1-96.

3. *Background.* This Order, which repeals and supersedes Secretary's Order 1-90, constitutes the generic Secretary's Order for the Occupational Safety and Health Administration. Specifically, this Order, in conjunction with Secretary's Order 5-96, effects an exchange of particular authorities and responsibilities between the Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health. The exchange was tested in a pilot project for Region VI established by Secretary's Order 6-94 (extended by Secretary's Order 1-96), that granted these Assistant Secretaries limited concurrent authority to enforce certain laws establishing labor standards affecting field sanitation and migrant housing, which had been delegated to the Occupational Safety and Health Administration (OSHA) under Secretary's Order 1-90, and certain environmental and public health-related whistleblower protection laws, which had been delegated to the Employment Standards Administration (ESA) under Secretary's Order 1-93. The pilot project resulted in a determination that the respective agencies would make better